

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/09/2003

CORAM

The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.14227 of 2000

M/s. Sudarsan Trading company Limited
rep. by its Deputy General Manager
(Personal & Administration)
Mr.M.Ramachandran Petitioner

-Vs-

1. Government of Tamilnadu
rep. by its Secretary to
Government, Housing
Development Department, Chennai 9.

2. Chennai Metropolitan Development
Authority,
Chennai 8.

3. Chennai Municipal Corporation
Chennai 3. Respondents

Prayer: Petition filed under Article 226 of the Constitution of
India, praying to issue a writ of certiorarified mandamus, as stated therein.

For Petitioner : Mr.T.V.Ramanujan
Senior Counsel
for Mr. B.Divakaran

For Respondents : Mr.V.Perumal for R2
Mr.R.Vijayakumar
Government Advocate
for R1.

:ORDER

This writ petition has been filed for the issuance of writ of
certiorarified mandamus, to call for the records of the first respondent in
G.O.(D).No.487 Housing and Urban Development (Na.Va.5) Department dated
26.07.2000 and to quash the order therein dated 26.07.2000 confirming the
rejection of the Planning Permission by the second respondent dated 30.05.1995
in C3/25716/94 and direct the respondents to grant Planning permit to put up
additional construction over the existing building in SN.1431/1 as per the

Plan submitted by the petitioner.

2. The petitioner company acquired 10 grounds and 1560 square feet of land jointly with one K.M.Haridass from Raja of Venkatagiri on 04.06.1965. After partition, three grounds with undivided right over one ground was given to the petitioner by a deed of partition dated 10.11.1965. The petitioner company put up a seven storeyed building after obtaining the sanction plan from the Corporation of Chennai in the year 1965 long prior to the formation of Madras Metropolitan Development Authority. The Corporation has assessed the property tax and the petitioner has been paying the tax in respect of the said building.

3. Subsequently, the petitioner company acquired 7 grounds and 1560 square feet of land by sale deeds on various dates. This land is situated on the southern side of the building constructed by the petitioner. There is a 33 feet common passage on the western side of the said land, which gives access to other multi-storeyed buildings, constructed by other land owners.

4. The petitioner company have an entrance with 14 feet gate on the 33 feet road on the southern side of the building. Apart from this, they have accesses to the said property through the existing building from Whites road. Considering the more extent of land and allowable Floor Space Index (FSI) as per the Development Control Rules (DCR), the petitioner company proposed to put up an Office Building for which they submitted a plan in 1986. The Corporation and Chennai Metropolitan Development Authority sanctioned the construction of the 1+3 floors with planning permission in letter No.C.8930/86 dated 04.06.1986 , and construction was put up accordingly.

5. The petitioner proposed to construct an additional 4 floors over the approved plan sanctioned by the CMDA, and they submitted the plan for the additional floors on 06.12.1994. However, the second respondent rejected the plan on the ground that the petitioner have exceeded the FSI already. In the appeal, it was brought to the notice of the authorities that the total area is 7 ground and 1560 square feet and as such FSI worked out to 2.198, which is less than 2.25 allowed in DCR.

6. The petitioner has provided sufficient parking for the vehicle and they also obtained No Objection Certificate from the Deputy Commissioner (Traffic) for construction of multi-storeyed building and all the other conditions required for constructing the multi-storeyed building have been complied with.

7. It is further stated in the affidavit though the additional floor sought for over the existing building is within law and within the permissible limits, the authorities were keeping the matter pending from 03.06.1996 onwards in spite of several reminders. Therefore, the petitioner filed W.P.No.16488 of 1997, seeking for a writ of mandamus to dispose of the appeal and this Court directed the first respondent to dispose of the appeal within two months after hearing the petitioner and respondent by order dated 03.11.1997.

8. On 10.12.1997, the representative of the petitioner was again called for a meeting with the Principal Secretary to Government and he explained the position and submitted a representation in writing pointing out that all the requirements suggested by the CMDA were complied with. At that time it was pointed out that the main building was constructed during 1965 prior to the formation of the CMDA and as such buildings are exempted under

Rule 4 of DCR Rules. The permission sought for now is in respect of construction over lands purchased by the petitioner between 1969 - 1972 by separate documents was nothing to do with the construction put up in 1965. The permission to put up three floors in this newly acquired land was granted as early as on 04.06.1986. The present request is to put up additional floors of 4 to 7 over the existing building. All the requirements were also complied with. It is on the "

"whites road". The width of road is 24.40 meters. Further the petitioner already complied with all the directions issued by the authorities and removed the compound wall and also the structure on the ground floor, providing for car parking. But the respondent rejected their request on the ground that the entire area has to be taken as one unit and so viewed the constructed area already existed which is permissible under the Rules. Hence, the present writ petition.

9. In the counter filed on behalf of the second respondent, it is stated as follows:

The petitioner earlier had applied for additional construction on 3rd to 7th floors over the existing ground plus 2 floors building at R.S.No.343 Part, D.No.14, Whites Road, Royapettah, Chennai by a letter dated 27.11.1994. The proposal was examined and rejected on 30.05.1995. An appeal was preferred to the Government against that order and the Government by letter dated 19.08.1996 requested the respondent to offer its remarks and remarks were submitted recommending for rejection of the appeal of the petitioner. Subsequently, the petitioner submitted further representation to the Government on 06.12.1996. The law department opined that FSI of multi-storeyed buildings that were existing before 05.08.1975 after approval need not be taken into account while granting permission for the proposed rear block construction and the respondent to amend the DCR in line with the opinion of the Law Department. Then the opinion of the Law Department was discussed in detail by this respondent. Since the FSI is an indirect tool for controlling density and excluding the area built prior to 05.08.1975 which would create a bad precedent and make space for the infrastructure facilities, it was conveyed to the Government by letter dated 30.03.2000, that the floor area built before 05.08.1975 cannot be excluded from the calculation of FSI and hence there is no need to amend the Development Control Rules.

Subsequently, the Government by letter dated 26.07.2000 rejected the appeal of the petitioner. 10. As per the Rules in force, FSI has worked out for

any site as a whole by dividing the total area of all the buildings within the site by the Plot Area. While calculating so, the construction in the front block has to be included, though it is constructed prior to 05.08.1975. The FSI exceeds by 0.32 and hence there is already violation of FSI Rules. Though the land of 7 grounds and 1546 square feet was purchased by the petitioner under separate documents, since in the proposal two sites have been amalgamated for computation of FSI, the floor area of the front block is also to be included. Therefore, the present request cannot be complied with and the petition is liable to be dismissed. 11. The learned Senior

Counsel Mr.T.V.Ramanujam appearing for the petitioner submitted that admittedly the front block was constructed in prior to the year 1975 much earlier to the formation of CMDA. Therefore, the rules framed by the CMDA has no application to the existing building. The additional area which is behind the multi-storeyed building already put up, forms part of the entire area and

it is one unit; Hence, the access is only on the Whites road; Further they have made alteration as suggested by the department and demolished certain constructions. Therefore, the Government is estopped from going back on that promise and the Government is bound to grant permission as prayed for. For calculating FSI, the newly acquired block has to be taken independently and the planning permission cannot be rejected. Hence, the impugned order is liable to be set aside. 12. The learned counsel for the second respondent referred to Annexure-IX of the Development Control Rules which contains the following Special Rules for multi-storeyed buildings: "Rule 17(a) Site Extent: the minimum extent of site for construction of multi-storeyed buildings shall not be less than 1500 square metres, 17(b) Road Width: The site shall either abut on a road not less than 18 metres in width or gain access from a public road of not less than 18 metres through a part of the site which can be treated as an exclusive passage, of not less than 18 metres in width.

The proposed building site is not abutting Whites road, but on the lane which is branching off the Whites road. This piece of land is not entitled to be considered as a part of the main block abutting the Whites road. The lane on the western side of the land is only 30 feet or 9 metres width. On the road having a width of 9 metres, more than 1+2 floors cannot be constructed. The petitioner has already constructed 1+3 floors and therefore, the petitioner cannot be allowed to put up 4-7 floors in the newly acquired area. Therefore, the order passed by the appellate authority is legally sustainable and the writ petition is liable to be dismissed.

13. From the affidavit filed along with the writ petition, it is seen that originally a plot was purchased by the petitioner company abutting Whites road and a multi-storeyed building has already been put up in the year 1965 itself. The entire extent of the land is covered by the building. There is no sufficient vacant place on either side of the buildings. It is an admitted case of the petitioner that subsequently, 7 grounds which were acquired on the southern side of the property has an adjacent road of 30 feet on the western side of the property, which is the western boundary of the newly acquired area. But the learned counsel for the petitioner takes the stand that the entire land has to be taken as one unit abutting the Whites road. Therefore, for the purpose of calculating FSI and for granting building plan, it must be taken as land abutting Whites Road. That is, though the area first purchased by him and the building had already been put up on that, the entire land including the subsequent purchase must be treated as one unit. But at the same time, the counsel submits that for calculating FSI, the constructed area that was put up prior to 1975 must be excluded and that take cannot be taken into account for the purpose of sanctioning the plan for the proposed additional construction. That is FSI shall be calculated only for the newly acquired area but assuming it to be abutting White's Road.

14. When the petitioner concedes that the entire land as one unit abutting Whites road (only if such a stand is taken, the petitioner is entitled to put up multi-storeyed building) then for all purposes that entire land must be treated as one unit. When so treated for granting permission to

put up new construction, the rules that must be applied is the existing rule as on the date when the application for sanction of plan is considered. If the entire land is construed as one unit, then the already constructed area in the front side must also be taken for calculating the FSI. The argument that constructed area must be excluded as it was constructed long prior to the establishment of CMDA itself is not acceptable. It is true that earlier the petitioner was permitted to put up construction. Though it was not possible to demolish the excess constructed area at this stage, yet if the new construction is to be put up, the already put up constructed area has to be taken into account; that is what the appellate authority has done. If the entire land is taken as one unit, for sanctioning the plan for putting up new or additional construction, the built up area already in existence has necessarily to be taken into account; only for the balance of the FSI, permission can be granted.

15. If the newly acquired area is treated as separate unit, then separate FSI can be adopted. The petitioner is not taking the stand that the newly acquired area as a separate unit for the reason if that stand is taken, the newly acquired plot would abut the 30 feet road and not Whites road. When any property abuts 30 feet road, it can have more than 1+2 floors only. Therefore, if it is considered as plot abutting 30 feet road more than 1+2 floors cannot be permitted. If it is considered as abutting whites road, the entire area has to be construed as one unit and so construed already existing area must be taken in to account for calculating the FSI. 16.

Since the petitioner opts to construe the entire land as one unit and wants to consider as a plot abutting whites road, the entire area already built up must also be taken into consideration while calculating the FSI. When so calculated, the petitioner is not entitled to put up any more floors. Therefore, the order of the appellate authority is not illegal and hence it is to be confirmed.

17. The learned counsel argued that since on the instruction given by the Government the compound walls were removed and provisions were also made for additional car parking in the ground floor, the Government is estopped from going back on the promise. It is an axiomatic principle that there is no estoppel against a statute or rules. When the rules are specific, any promise made contrary to the rules does not create any enforceable right or estopped from going back. Therefore, the principle of promissory estoppel has no application to the present case. Inasmuch as there cannot be estoppel against the statute and therefore, this argument of the learned counsel for the petitioner is also rejected.

In the result, the writ petition is dismissed. No costs.

Index:Yes

Internet:Yes

ksr/kvsg

To

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